

### **REMARKS/ARGUMENTS**

The Examiner has rejected claims 1-3 under 35 U.S.C. § 103 (a) as being unpatentable over Omran et al. (of record) in view of St. Cyr (US 6,218,366). Applicants agree that the reference teaches the invention; in fact, the work reported in the reference is the reduction to practice of the invention.

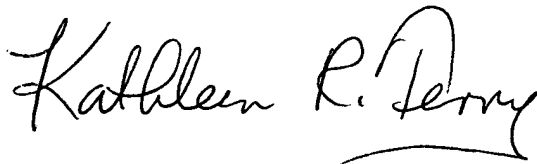
The Examiner points out that the reference is before the 102(a) putative date of invention. In the absence of other documentation, the date of invention is taken to be the date on which the patent application was filed, in this case, days after the publication of the reference. The Examiner noted that this reference was cited previously and that Applicants filed a statement under 35 U.S.C. § 103 ( c), upon which the rejection was withdrawn. Applicants note that 102 (a) date references are not entitled to the exclusion provision of 103 ( c). Applicant John St. Cyr herewith submits an affidavit explaining that he is an inventor and an author of the reference; the invention was complete and detailed in a protocol prior to or shortly after July 28, 2000 and that the 102 (a) others Omran, Illien, MacCarter and Lüderitz are not inventors but merely carried out the actual reduction to practice, following the protocol and under the direction and control of John St. Cyr. Applicants now assert that the 103 (a) rejection based on a 102 (a) date is not applicable to this reference because the correct date of invention is prior to or shortly after July 28, 2000, at which time the inventors had set out the fixed and permanent process by which the invention was to be made and used and the protocol detailing the process was transmitted to Dr. Omran and his colleagues. Please note that paragraph 5 of the affidavit notes that once the German equivalent of the Institutional Review Board has approved a protocol, it is fixed, that is, cannot be changed. The Examiner is also asked to take notice that in any case, the invention must have made well before the June, 2001 publication date in order to treat the patients, analyze the data, and write and submit the abstract.

To summarize, the invention was not known to others more than a year prior to the reference. The date of invention is prior to or shortly after July 28, 2000, eleven months before the publication date of the reference. Dr. Omran, lead author of the reference did not know of the invention until after the protocol was submitted to him; the others did not know of the invention until they collaborated with Dr. Omran. Therefore, the rejection under 35 U.S.C. § 103 (a) based on 102(a) is not applicable.

Appl. No. 10/692,338  
Amendment dated January 29, 2009  
Response to Office Action of November 14, 2008

Applicants believe that with the current amendment, claims 1-3 and 6 are in condition for allowance and respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

A handwritten signature in black ink that reads "Kathleen R. Terry". The signature is written in a cursive style with a large, looping initial 'K' and a distinct 'R'.

Kathleen R. Terry, Attorney for Applicants  
Reg. No. 31884  
(763) 757-0032  
krterry@visi.com

Kathleen R. Terry  
Bionenergy, Inc.  
13840 Johnson St. NE  
Ham Lake, MN 55304